

5.0 COMPLIANCE WITH APPLICABLE LAWS, EXECUTIVE ORDERS, REGULATIONS, AND POLICIES

The following is a summary of selected statutes, regulations, and Executive Orders pertaining to the preparation of EAs on Federal land.

- **National Environmental Policy Act (NEPA) of 1969. Public Law 91-190, 42 United States Code (U.S.C.) 4321-4370(e), as amended.** NEPA requires Federal agencies to take into consideration the environmental consequences of proposed actions as well as input from State and local governments, Indian tribes, the public, and other Federal agencies, during their decision-making process. The Council on Environmental Quality was established under NEPA to ensure that all environmental, economic, and technical considerations are given appropriate consideration in this process. This EA complies with NEPA statutes and regulations, the Department of Interior Manual, and Reclamation's NEPA Handbook.
- **Clean Water Act of 1977, as amended.** Section 404 of this Act identifies conditions under which a permit is required for construction projects that result in the discharge of fill or dredged material into waters of the United States. There are some jurisdictional waters of the United States within the project area. Scottsdale will prepare a detailed jurisdictional delineation, confirm this with U.S. Army Corps of Engineers, and obtain necessary permits prior to any discharge into waters of the U.S. Section 402 of this Act identifies conditions under which a permit is required for the discharge of pollutants from a point source into waters of the United States. A point source NPDES permit is not required as there would be no pollutants discharged as a result of the proposed alternative. NPDES stormwater permitting rule requires all operators of construction activity disturbing 5 or more acres of land to apply for a NPDES stormwater permit. The Proposed Action would "disturb" more than a total of 5 acres of land at the site and therefore a NPDES permit would need to be obtained before any construction activities begin.
- **Safe Drinking Water Act of 1974, as amended.** Section 1424 of this Act regulates underground injection into an aquifer, which is the sole or principal drinking water source for an area. The aquifer beneath the project area is not a designated sole source aquifer; therefore this Act does not apply.
- **Executive Order 11988, Floodplain Management, May 24, 1977.** Executive Order 11988 requires avoiding or minimizing harm associated with the occupancy or modification of a floodplain. The action alternatives for this project would not cause any harm to the floodplain. Any recreation amenity or facility developed at WestWorld would need to be sited and operated in such a manner so that it would not result in adverse modifications to the floodplain, conflict with the basin's primary function as a flood detention basin, or cause harm to any adjacent or downstream landowner.
- **Executive Order 11990, Protection of Wetlands, May 24, 1977.** Executive Order 11990 requires Federal agencies or Federally funded projects to restrict uses of Federal lands for the protection of wetlands through avoidance or minimization of adverse impacts. The Order was

issued to "avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands whenever there is a practicable alternative." No wetlands will be affected by this project.

- **Wild and Scenic Rivers Act of 1968.** This Act requires consideration of wild and scenic rivers in planning water resources projects. Developing water resources projects is prohibited on any river designated for study as a potential component of the national wild and scenic river system. There are no such rivers or candidates in the area that would be affected by this project.
- **Fish and Wildlife Coordination Act (FWCA) of 1934, as amended.** This Act requires coordination with Federal and State wildlife agencies (USFWS and Arizona Game and Fish Department [AGFD]) for the purpose of mitigating losses of wildlife resources caused by a project that impounds, diverts or otherwise modifies a stream or other natural body of water. Reclamation originally coordinated with USFWS and AGFD pursuant to the FWCA during the NEPA process associated with construction of the Hayden-Rhodes Aqueduct (then called the Granite Reef Aqueduct). Additional coordination is not required for this action; however, FWS and AGFD were invited to provide scoping comments, and the EA for this project is being provided to USFWS and AGFD for review.
- **Endangered Species Act of 1973, as amended.** Section 7 of the Act requires Federal agencies to consult with the USFWS to ensure that undertaking, funding, permitting, or authorizing an action is not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. Critical habitat, as defined under the Act, exists only after USFWS officially designates it. Critical habitat are areas (1) within the geographic area, features essential to the conservation of the species and that may require special management consideration or protection; and (2) those specific areas outside the geographic area, occupied by a species at the time it is listed, essential to the conservation of the species. No federally protected species would be affected by either of the action alternatives described in this EA, and no portion of WestWorld has been designated as critical habitat for species listed under the Act.
- **Clean Air Act of 1963, as amended.** This Act requires any Federal entity engaged in an activity that may result in the discharge of air pollutants to comply with all applicable air pollution control laws and regulations (Federal, State, or local). This Act directs the attainment and maintenance of the NAAQS for six different criteria pollutants, including carbon dioxide, ozone, particulate matter, sulfur oxides, oxides of nitrogen, and lead. Implementation of the proposed project would include ground-disturbing activities that would create short-term fugitive dust and PM₁₀ air quality impacts. Maricopa County Air Quality Rules outline measures that would be incorporated into construction specifications to minimize potential dust emissions. Rules 310 and 310.01 of the Maricopa County Air Quality Rules include work practice standards that will ensure emissions from fugitive dust sources, such as open areas, vacant lots, unpaved parking lots, and unpaved roadways, are minimized to the extent practicable. An earth-moving permit and dust control plan are required for any operations that disturb a total surface area equal to or greater than 0.10 acre. A SIP Conformity Analysis will be conducted if it is determined the total number of acres to

be disturbed concurrently during any given time merits such an analysis. Long-term air quality impacts are not expected to result from operation and use of the recreation facilities.

- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.** This Order directs Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health and environmental effects of their programs, policies, and activities on minority populations and low-income populations. The alternatives would not introduce disproportionately high and adverse human health and environmental effects on the surrounding population; there would be no adverse effect as defined by this Executive Order.
- **Executive Order 13007, Indian Sacred Sites, 1996.** Executive Order 13007 requires that all Executive Branch agencies having responsibility for the management of Federal lands will, where practicable, permitted by law, and not clearly inconsistent with essential agency functions, provide access to and ceremonial use of Indian sacred sites by Indian religious practitioners and will avoid adversely affecting the integrity of such sacred sites. The Order also requires that Federal agencies, when possible, maintain the confidentiality of sacred sites. Reclamation will comply with this Executive Order where applicable and has sent a copy of the draft EA to the following Tribes for their consideration and review: Salt River Pima Maricopa Indian Community, Gila River Indian Community, Ak-Chin Indian Community, Tohono O'odham Nation, Fort McDowell Yavapai Nation, Hopi Tribe, and Zuni Pueblo.
- **National Historic Preservation Act (NHPA) of 1966, as amended.** Federal undertakings must comply with Section 106 of NHPA, which mandates that potential effects on significant historic properties be considered prior to approval of such undertakings. Significant historic properties are defined as sites, districts, buildings, structures, and objects eligible for the National Register of Historic Places. Consideration of these resources is to be made in consultation with the SHPO and other interested agencies and parties. No properties were identified as eligible for listing on the National Register of Historic Places, in compliance with the NHPA. Reclamation would consult with SHPO prior to any land disturbing activities on the State Trust Land parcels A and B and the 5-acre parcel north of the WestWorld property.
- **Native American Graves Protection and Repatriation Act (1990) (25 USC 3001-3013).** This Act requires protection and repatriation of Native American cultural items found on, or taken from, Federal or tribal lands, and requiring repatriation of cultural items controlled by Federal agencies or museums receiving Federal funds. Should previously unidentified cultural resources, especially human remains, be encountered during construction, work will stop immediately at that location and Reclamation's Cultural Resources Branch will be notified to ensure proper treatment of these resources.
- **Executive Order 11988, Floodplain Management.** Executive Order 11988 requires a Federal construction agency to "avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative" within the 100-year floodplain. The purpose of this directive is to avoid, where practicable

alternatives exist, short- and long-term adverse impacts associated with development in a floodplain. In carrying out their responsibilities, Federal agencies are required to reduce the risk of flood loss; minimize the impact of floods on human safety, health, and welfare; and restore and preserve the natural and beneficial values served by floodplains. Adherence to Reclamation's "Guidelines for Road Crossings and Development within Dike Drainage Basins" will ensure consistency with this Executive Order.